

SERVED: August 14, 2003

NTSB Order No. EA-5052

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13th day of August, 2003

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Dockets SE-16922 and
	)	SE-16923
v.	)	
	)	
TAREK HASSAN JIFRY and	)	
MAAN HASSAN ZARIE,	)	
	)	
Respondents.	)	
_____	)	

**OPINION AND ORDER**

The respondents have appealed from an order Administrative Law Judge Patrick G. Geraghty served in this proceeding on July 15, 2003.<sup>1</sup> That order granted the Administrator's motion for summary judgment on emergency orders she had issued on June 16, 2003, revoking any airman certificate held by respondents, including Airline Transport Pilot Certificates (No. 2293881 and No. 2339384, held by respondents Zarie and Jifry, respectively),

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<sup>1</sup>A copy of the law judge's order is attached.

pursuant to section 61.18(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61). The consolidated appeal will be denied.

Individuals that the Transportation Security Administration (TSA) has determined pose a security threat are not eligible to hold an airman certificate, rating, or authorization under FAR Part 61.<sup>2</sup> Because TSA has made such determinations with respect to both of the respondents, the law judge concluded that the Administrator's revocation orders were required under the terms of her regulation. In so concluding, the law judge relied on recent Board precedent, involving appeals from the same two respondents, which unequivocally held that the Board does not have jurisdiction to review the validity of TSA security threat assessments entered under authority given to it in the Aviation and Transportation Security Act.<sup>3</sup>

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<sup>2</sup>FAR section 61.18 provides as follows:

**§ 61.18 Security Disqualification.**

(a) *Eligibility Standard.* No person is eligible to hold a certificate, rating or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) *Effect of the Issuance by the TSA of an Initial Notification of Threat Assessment.* The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

<sup>3</sup>Administrator v. Zarie, NTSB Order No. EA-5033 (April 1, 2003), and Administrator v. Jifry, NTSB Order No. EA-5034 (April 1, 2003). These appeals challenged emergency suspensions predicated on preliminary security threat assessments TSA had

Respondents' renewed position in this round of appeals that they are entitled to a hearing before the Board on the factual basis for TSA's threat assessment rests in effect on the same arguments that the law judge and the Board found unpersuasive in their earlier cases. We perceive no need to revisit those arguments, for, in our view, they do not establish that the Board is mistaken in its view that "where, as in this matter, the Administrator has incorporated in a regulation a judgment about the eligibility for airman certification of a class of persons that another federal agency has identified as presenting a risk to aviation security, the Board has no authority to look behind that choice." Zarie, supra, at 3. The law judge's ruling must therefore be sustained.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondents' appeal is denied; and
2. The order of the law judge granting summary judgment for the Administrator and affirming the emergency orders of revocation is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA and HEALING, Members of the Board, concurred in the above opinion and order. CARMODY, Member, did not concur, and submitted the following dissenting statement.

(..continued)  
made concerning the respondents. See FAR section 61.18(b). The instant appeals involve TSA's final judgments that the respondents pose security threats.

I had misgivings about notations 7541 and 7542 (Zarie and Jifry) when the Board considered them a few months ago. The Board was asked to affirm that the respondents held airmen certificates and that the Transportation Security Administration (TSA) had notified the Administrator that the two men posed a security threat. The law judge concluded that the NTSB lacked the jurisdictional authority to review the TSA's determination. Although I voted to approve the judge's decision and the revocation order, I filed a statement saying my decision did not reflect any judgment on the TSA process or determination since everything was based on information which we had neither received nor had authority to review.

Now the second round of appeals comes before us with notation 7579. The respondents are seeking a hearing on the factual basis for the TSA's assessment. The proposed opinion and order denies the appeal citing, once again, that the Board lacks jurisdiction to review the TSA assessment.

I will not approve this opinion and order and I regret my earlier vote on 7541 and 7542. I agree that the NTSB does not have jurisdiction. Why then should we exercise judgment over something we have absolutely no information about? No intellectual power is required to agree that the individuals had certificates and that the TSA notified the FAA that the men were a security threat. There is no question about these facts. If this is the appeal process, it is flawed and senseless. Approving such an order gives it a legitimacy that it doesn't deserve. Further, it does not seem responsive to the request for review.

I do not believe the NTSB is the correct body to review cases of this type. National security is not within the NTSB's jurisdiction. Cases like these put the Board in the position of having to pass judgment where the facts are unavailable, and the possibility of exercising meaningful review does not exist.